

In the Matter of Merchant Mariner's Document No. Z-247207-D1
Issued to: CHARLES A. ELLIOTT

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CHARLES A. ELLIOTT

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 2 November, 1954, an Examiner of the United States Coast Guard at Long Beach, California, revoked Merchant Mariners Document No. Z-247207-D1 issued to Charles A. Elliott upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a wiper on board the American SS EMPIRE STATE, under authority of the document above described, on or about 27 December, 1952, he took the Engine Room Logbook from the Chief Engineer's room and threw it over the side of the vessel. A specification was found not proved and dismissed by the Examiner.

This hearing resulted from a remand of the case by order of the Commandant dated 1 December, 1953 (Appeal No. 716). On 8 September, 1954, Appellant appeared at the Coast Guard office in Long Beach, California, and requested a hearing on the remanded charge and specification. At this time, Appellant was served with a copy of the charge and specifications; he was ordered to appear for a hearing at Long Beach on 15 September, 1954; he was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing; and he was warned that the proceedings would be held in absentia if he failed to appear as was the case at the prior hearing. Appellant offered no objection to the conducting of the hearing at Long Beach on 15 September, 1954, and stated that he would appear at that time.

On 9 September, 1954; Appellant telephoned the Coast Guard office at Long Beach and told the Senior Investigating Officer that Appellant had been advised by counsel not to appear at the hearing because the Coast Guard intended to file additional charges against Appellant if he did appear. Again, Appellant was warned that his failure to appear would result in the hearing being conducted in absentia.

On the day of the hearing, the Examiner received a letter, postmarked in Los Angeles, California, and dated 13 September, 1954, from Appellant. The letter states, in part, that Appellant would not be able to attend the hearing due to the lack of transportation to Long Beach. Also enclosed with this letter was an affidavit referring to the charges and signed by Appellant.

On the basis of the above information which was introduced in evidence at the commencement of the hearing on 15 September, 1954, the Examiner granted the Investigating Officer's motion to proceed with the hearing, in absentia, as scheduled. On behalf of Appellant, the Examiner entered pleas of not guilty to the charge and each specification.

After the Investigating Officer made his opening statement, he introduced in evidence the testimony of the watchman and relief mate, both of who were witnesses to events at the time of the offense alleged in the above specification. The Investigating Officer also submitted in evidence portions of the Official Logbook of the EMPIRE STATE and the Shipping Articles showing that Appellant was serving on the latter ship at the time stated in the specification. The Investigating Officer then rested his case.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by proof of the above specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-247207-D1.

From that order, this appeal has been taken, and it is urged that the order is excessive; Appellant never had a logbook of the EMPIRE STATE in his possession except while performing his duties; Appellant was told that he could not subpoena certain persons as witnesses; Appellant could not appear at the hearing due to lack of funds for transportation because he has been unemployed; Appellant was not arrested by the police on 27 December, 1952; and Appellant's presence on merchant vessels would not be a "threat to their safety" as stated in the Examiner's decision. Also in the appeal are other comments which are completely irrelevant to this case.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 27 December, 1952, Appellant was serving as a wiper on board the American SS EMPIRE STATE and acting under authority of his Merchant Mariner's Document No. Z-247207-D1 while the ship was moored alongside a dock at Long Beach, California. A relief mate and watchman were on duty on the ship.

Between 1700 and 1800 on this date, Appellant obtained the Engine Room Logbook from the Chief Engineer's quarters, placed it in his hip pocket, and went on deck. The relief mate and watchman were standing at the head of the gangway when Appellant approached them and said he was going to take the logbook off the ship. The two men demanded the logbook but Appellant ran down the gangway and reached the dock before the watchman caught up to Appellant and grabbed for the logbook, Appellant threw the logbook against the side of the ship and it landed on a log camel between the ship and the dock. Appellant tried to shove the logbook into the water but the watchman restrained him and managed to recover the logbook.

When Appellant was taken before the Master immediately after this incident occurred,

Appellant commenced arguing with the Master to such an extent that the Master ordered Appellant's removal from the ship by the Harbor Police. Appellant was released and returned to the ship a few hours later.

OPINION

The findings are supported by substantial evidence. Since there is no doubt that Appellant was fully informed as to the nature of the proceedings as well as the time and place of the hearing, he had adequate opportunity to put in his defense at the hearing; and there is nothing in the record to support his claim that he was told he could not subpoena certain persons as witnesses. Appellant's contradictory reasons for not appearing at the hearing indicate that he purposely failed to appear without making any attempt to attend the hearing. At the time he was served with the charge and specifications, Appellant did not give any indication that he would not be able to take advantage of the convenient public transportation between Los Angeles and Long Beach.

There is no evidence that charges were filed against Appellant by the police on 27 December, 1952, and the findings of fact clearly state that Appellant was merely detained a few hours and then released by the police.

In view of Appellant's determined attempt to destroy valuable ship's property, even after he had been ordered to surrender it to the two men on duty by the gangway, it is my opinion that Appellant displayed a flagrant abuse of authority which makes him unfit for duty on merchant vessels of the United States. As stated by the Examiner, Appellant's reckless and total irresponsibility would cause him to be a threat to the safety of life and property if he were permitted to sail. The order of revocation is not considered to be excessive and it will be sustained.

ORDER

The Order of the Examiner dated at Long Beach, California, on 2 November, 1954, is modified to the extent that Appellant is ordered to surrender his Merchant Mariner's Document No. Z-247207-D1 to the Coast Guard immediately after service upon Appellant of this decision.

As so MODIFIED, said Order is

AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 3rd day of March, 1955.